

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
HAROLD PICK	)	
	)	
Applications for New Facilities in the	)	FCC File Nos. 0001506429, 0001973261,
Industrial/Business Pool, Stations WPZQ954,	)	0001992682
WQCA755, and WQCD501, Montrose, California	)	
	)	
Application for a New License for Amateur Radio	)	FCC File No. 0001970403
Service Station KG6WXX	)	
	)	
Petitions for Reconsideration filed by James A.	)	
Kay, Jr.	)	

**ORDER ON RECONSIDERATION**

**Adopted: January 23, 2007**

**Released: January 24, 2007**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us two petitions filed by James A. Kay, Jr. (Kay) for reconsideration of the grant of the above-captioned applications filed by Harold Pick (Pick). Specifically, Kay filed a petition for reconsideration of the grant of applications 0001506429 and 0001970403 on January 13, 2005,<sup>1</sup> and a petition for reconsideration of the grant of applications 0001973261 and 0001992682 on February 16, 2005.<sup>2</sup> For the reasons set forth below, the first petition is dismissed in part and denied in part, and the second petition is denied.

2. *Background.* Pick filed application 0001506429, seeking authorization for a new trunked Industrial/Business station in Montrose, California, on November 5, 2003, and the application was granted on February 24, 2004 under Call Sign WPZQ954. Pick filed application 0001970403 for a Technician Class Amateur Radio Service license on December 14, 2004, and the application was granted on the same date under Call Sign KG6WXX. Kay filed a petition for reconsideration of these license grants on January 13, 2005.

3. Pick filed application 0001973261, seeking authorization for a new trunked Industrial/Business station in Montrose, California, on December 16, 2004, and the application was granted on January 19, 2005 under Call Sign WQCA755. Pick filed application 0001992682, seeking authorization for a new trunked Industrial/Business station in Montrose, California, on January 4, 2005, and the application was granted on February 5, 2005 under Call Sign WQCD501. Kay filed a petition for reconsideration of these license grants on February 16, 2005.

4. In both petitions, Kay argues that Pick lacks the requisite character qualifications to be a

<sup>1</sup> Kay Petition for Reconsideration (filed Jan. 13, 2005) (Petition I).

<sup>2</sup> Kay Petition for Reconsideration (filed Feb. 16, 2005) (Petition II).

Commission licensee,<sup>3</sup> based on the following allegations:

- \* In 1993, Pick submitted false information to the Commission regarding the construction status of Station WNYQ465;<sup>4</sup>
- \* In 1995, Pick falsely implied in a statement to the Commission that Kay stole Pick's repeaters, when Pick was aware that others were responsible;<sup>5</sup>
- \* In 1995, Pick engaged in improper *ex parte* communications with Commission staff;<sup>6</sup>
- \* In 1995, Pick programmed a third party's radios to operate on a frequency licensed to a Kay repeater;<sup>7</sup>
- \* In 2003-04, Pick committed copyright infringement with respect to Motorola equipment.<sup>8</sup>

5. On December 1, 2005, Pick filed application 0002397521 to assign the licenses for Stations WPZQ954 and WQCA755 to Alliance Communications Group (Alliance). The application was consented to on December 12, 2005, and the assignment was consummated on December 14, 2005.

6. *Discussion.* Call Signs WQPZ954 and WQCA755. There is no suggestion in the record

---

<sup>3</sup> Kay also argues that the grants of applications 0001506429, 0001973261, and 0001992682 were improper because the Commission did not provide pre-grant public notice of the filing of the applications. See Petition I at 2-4; Petition II at 2-3. Kay acknowledges that the Commission has classified licenses of the type applied for by Pick as Private Mobile Radio Service (PMRS) and that the Commission therefore exempts them from the pre-grant public notice requirement in Section 309 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 309. Kay asserts, however, that this conclusion "is not properly applied in situation [sic] where the applicant intends to use the facilities to provide service to third parties on a commercial basis and will be competing directly with Commercial Mobile Service ('CMRS') licensees." Petition I at 3; Petition II at 3. The Commission has already rejected this argument. See *Brookfield Development, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 14385, 14388-90 ¶¶ 9-13 (2004). Section 332 of the Act classifies mobile services as either "commercial mobile service" or "private mobile service," and provides that "the term 'commercial mobile service' means any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulations by the Commission." 47 U.S.C. § 332(c)(1), (c)(2), (d)(1). The three Pick applications at issue requested facilities for service that would be private and not interconnected with the public network, and the service is accordingly presumed to be PMRS. Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1445-46 ¶ 76 (1994); see 47 C.F.R. § 20.9(a)(14). This presumption may be overcome only upon a showing by a petitioner challenging the PMRS classification that the mobile service in question is the functional equivalent of a commercial mobile radio service, but Kay does not present any evidence to establish that Pick's services are, in fact, the functional equivalent of CMRS. Consequently, he fails to establish a basis for overcoming the presumption that the application should be treated as PMRS.

<sup>4</sup> See Petition I at 8; Petition II at 7.

<sup>5</sup> See Petition I at 6-7; Petition II at 5-6.

<sup>6</sup> See Petition I at 9-10; Petition II at 8-9.

<sup>7</sup> See Petition I at 10-11; Petition II at 9-10.

<sup>8</sup> See Petition I at 11-12; Petition II at 10-11. Kay also alleges that Pick committed fraud with respect to Motorola equipment, but Motorola's fraud claim subsequently was dismissed. See *Motorola, Inc. v. Pick, Judgment and Permanent Injunction*, No. CV04-2655 ABC (SHx) (C.D. Cal. Nov. 16, 2005).

that Alliance is anything other than a bona fide third-party purchaser, or has any connection whatsoever to Pick's alleged misconduct. Under the circumstances, we conclude that it would be inappropriate to reconsider the grant of the licenses now held by Alliance.<sup>9</sup> We therefore deny the petitions for reconsideration with respect to Call Signs WQPZ954 and WQCA755.

7. Call Sign KG6WYK. Kay argues that he has standing to seek reconsideration of the grant of Pick's amateur license, Call Sign KG6WYK, because Kay also is an amateur radio licensee (Call Sign KA6BGS) and thus has an interest in ensuring that other amateur licensees—particularly those in the same geographic area—will maintain the quality and character of the amateur service.<sup>10</sup> We disagree. That Kay and Pick both are amateur licensees does not suffice to confer standing on Kay to seek reconsideration of the grant of Pick's license.<sup>11</sup> Consequently, we dismiss Kay's petition for reconsideration with respect to Call Sign KG6WYK.

8. Call Sign WQCD501. Kay argues that Pick lacks the requisite character qualifications to be a Commission licensee, based on five incidents. Three of these incidents, which occurred between 1993 and 1995, involve presentations to the Commission with respect to what appear to be legitimate disputes between Kay and Pick. They do not constitute grounds to disqualify Pick from holding a Commission license.<sup>12</sup> A fourth incident, which also allegedly occurred more ten years ago, also is too stale to support license rescission.<sup>13</sup> Finally, copyright infringement “is not a matter that we would ordinarily consider in reviewing an application.”<sup>14</sup> Consequently, we conclude that Kay has not raised matters sufficient to call into question Pick's qualifications to be a Commission licensee. We therefore deny Kay's petition for reconsideration with respect to Call Sign WQCD501.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed on January 13, 2005 by James A. Kay, Jr. IS DISMISSED IN PART AND DENIED IN PART, and the Petition for Reconsideration filed on February 16, 2005 by James A. Kay, Jr. IS DENIED.

---

<sup>9</sup> See Walton Broadcasting Co., *Memorandum Opinion and Order*, 28 F.C.C. 2d 111, 114-15 ¶ 13 (1971) (pending character issues need not be addressed with respect to assigned station where taking action with respect to those issues “would unfairly burden innocent persons”) (citing, e.g., Tinker, Inc., *Memorandum Opinion and Order*, 8 F.C.C. 22 (1967)).

<sup>10</sup> See Petition I at 2.

<sup>11</sup> See Chris C. Hudgins, *Order on Reconsideration*, 16 FCC Rcd 7941, 7944 ¶ 9 (WTB PSPWD 2001).

<sup>12</sup> See Philip J. Plank, *Letter*, 21 FCC Rcd 8686, 8688 (MB AD 2006); Emmis Television License, LLC, *Letter*, 20 FCC Rcd 19073, 19076 (MB VD 2005); see also Verizon Communications Inc., *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18527 ¶ 187 (2005) (“As the Commission previously has concluded, an applicant's lawful exercise of its rights does not raise character concerns . . .”) (citing Ameritech Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14950 ¶ 571 (1999)).

<sup>13</sup> See TRW Inc., *Order and Authorization*, 17 FCC Rcd 24625, 24629 ¶ 10 (IB SD 2002) (“we do not consider ten-year old misconduct *per se* indicative of an applicant's or licensee's character qualifications”) (citing Policy Regarding Character Qualifications in Broadcast Licensing, *Report, Order, and Policy Statement*, GEN Docket No. 81-500, 102 F.C.C. 2d 1179, 1228-29 (1986)).

<sup>14</sup> See Univision Holdings, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 6672, 6687 ¶ 45 (1992).

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau